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VIA ELECTRONIC FILING

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: *Application by Verizon New England et al. to Provide In-Region InterLATA Services in Rhode Island, CC Docket No. 01-324*

Dear Mr. Caton:

By this letter, AT&T responds to the Commission's Public Notice seeking comment on the last-minute rate changes proposed by Verizon-Rhode Island on February 14, 2002, ten days before the Commission is required to issue a decision on Verizon's pending section 271 application.

The Commission has consistently held that "a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making findings thereon." *Ameritech Michigan Order* ¶ 49 (quoting earlier Public Notice). As the Commission has explained, a BOC should not be permitted to change or add to the evidence it files with its original application, because it would be unfair to third parties, it makes it difficult or impossible for the state commissions and the DOJ to perform their statutory duties, and it places an undue burden on the Commission and its limited resources. *See Ameritech Michigan Order* ¶¶ 52-54. In particular, unbundled network element prices are typically one of the most important issues in any Section 271 proceeding, and the Commission has therefore emphasized that "[w]e expect the parties to file a complete application, including any prices on which they want the Commission to rely in its decision, *on day one*." *Kansas/Oklahoma Order* ¶ 26 (emphasis added). If an applicant files new information during the 90-day review period, the Commission reserves the right either to ignore the new information or to restart the 90-day clock. *See id.*, ¶ 21.

Verizon's late-filed rates, filed on Day 80 of the statutory 90-day period, plainly violate the Commission's "complete when filed" rule and should be disregarded.[1] Verizon, however, asks that the Commission waive the rule and permit it to rely on late-filed rates, as the Commission did in the *Kansas/Oklahoma Order* (¶¶ 20-27). Verizon's waiver request should be rejected. The Commission stated in the *Kansas/Oklahoma Order* that "we believe it would be rare for other parties to satisfy the high bar set here [for a waiver] in future applications." *Id.* ¶ 26. Verizon's request does not surmount that "high bar" for several reasons.

First, Verizon cannot seriously claim that its late-filed rates have afforded the Commission or interested parties a meaningful opportunity to respond to what is the central issue in this proceeding. *Cf. Kansas/Oklahoma Order* ¶ 23. To be sure, in the *Kansas/Oklahoma Order*, the Commission permitted SBC to rely on rates filed on Day 63 of the 90-day period, but Verizon filed its rates here on *Day 80*, which as a practical matter permits no meaningful time for analysis. Indeed, two weekends and a federal holiday fall between Day 80 and Day 90, which means that the Commission has only *six business days* to analyze the most important issue in this case. Similarly, the Commission's Public Notice gave the parties, including the state commissions and the DOJ, five days that included a weekend and a federal holiday, *i.e.*, two business days, to analyze and file "comments" on these new rates. Such tactics are manifestly unfair to all parties, including the Commission.

Verizon's February 14 filing is especially egregious. The filing simply states the new rates. It provides no data to support them or to explain how they were derived. Nor does it provide the analysis underlying the suggestion that these rates are comparable, for benchmarking purposes, to the new New York rates. In short, Verizon's new rates require essentially the same amount of analysis as its original rates, and by filing the rates on which it will rely in this proceeding on Day 80, Verizon has effectively truncated the review period down to the vanishing point.

Second, Verizon's eleventh hour change of heart on switching rates cannot even charitably be called "an instance in which an applicant has responded to criticism in the record by taking positive action." *See Kansas/Oklahoma Order* ¶ 24. To the contrary, Verizon took an aggressive and calculated risk and chose *not* to base its application on UNE rates that could be cost-justified. Verizon chose instead to base its Rhode Island UNE rates on rates adopted by the NYPSC based on 1997 data, key elements of which were concededly inaccurate, and it further chose not to mount any substantive defense of those rates under TELRIC but instead relied solely on the old New York rates as a pre-approved "benchmark." Verizon and everyone else knew that an ALJ in New York had found that those old New York rates did not today comply with TELRIC (and in fact they never did), and that the NYPSC was actively considering the ALJ's recommendation. Moreover, the Commission had made clear in the *Verizon Massachusetts Order* (¶ 29) that if and when the NYPSC adopted new UNE rates, the old rates could no longer be relied upon as a benchmark. The NYPSC's recent rate order foreclosed that strategy, with the result that even Verizon could no longer deny what had been obvious to everyone else from the beginning – that the rates that Verizon relied upon in its application

[1] Alternatively, the Commission could simply "restart the clock" on this application moving the statutory deadline back 80 days to accommodate the late-filed evidence.

"when filed" did not comply with TELRIC. That outcome was entirely foreseeable, and the Commission should not reward such gamesmanship.

Nor would it be appropriate to respond to the untimeliness of this submission merely by delaying the effective date of any grant of interLATA authority for 60 days, on the basis of the *Kansas/Oklahoma Order* (¶ 26). In that order, the Commission conditioned the waiver "on delaying the effective date for 43 days after release," which "represent[ed] one day for each day between day 20 and day 63, when SBC filed these rate revisions." *Id.* Such mechanisms are no substitute for simply denying the waiver request, for two reasons. First, the Commission delayed the effective date in the *Kansas/Oklahoma Order* as a way of deterring similar waiver requests – a policy that has obviously failed. More importantly, however, a waiver would still confer an enormous strategic and procedural advantage on Verizon even if the effective date is delayed: If the Commission grants the waiver, the parties and the Commission will still have had only a handful of days to consider and analyze Verizon's UNE rates prior to the Commission's decision.[2]

In sum, the Commission should deny Verizon's waiver request. The BOCs have been steadily chipping away at the "complete when filed" rule until almost nothing is left. Indeed, despite the Commission's admonitions in the *Kansas/Oklahoma Order*, the practice permitted there has only encouraged more such waiver requests. And given the timing of Verizon's last-minute request here, a grant of the instant waiver request could effectively render the complete when filed rule a dead letter. If Verizon is successful, the Commission should expect such waiver requests – and the accompanying burdens on the Commission and other parties – to become routine. Indeed, the BOCs' new strategy would be fully vindicated: file Section 271 applications with egregiously unlawful UNE rates, in the belief that the Commission will permit wholesale changes at the last minute if necessary that no one will have adequate opportunity to analyze. The United States Court of Appeals for the District of Columbia Circuit has sharply questioned the role of late *ex parte* submissions in Section 271 proceedings. *See* Transcript of Oral Argument, *Sprint* v. *FCC*, No. 01-1076, p. 22 (D.C. Cir. Sept. 17, 2001) ("What are we to make of the blizzard of ex parte communications in this case?"). Permitting the extreme behavior proposed here would vividly confirm those concerns. The Commission should stop the erosion of the "complete when filed" rule, deny Verizon's waiver request, and put the BOCs back on notice that they must file a "complete application, including any prices on which they want the Commission to rely in its decision, on day one." *Kansas/Oklahoma Order* ¶ 26.

Sincerely,

Robert W. Quinn, Jr.

cc: Julie Veach
Gary Remondino
Kelly Trainor (DOJ)
Steve Frias (RIPUC)
Ann Berkowitz (Verizon)
Qualex

[2] By contrast, denying the waiver request would not necessarily require the Commission to deny the application. As discussed above, the Commission could instead avoid a formal denial by "restarting the clock." Moreover, such action would not require putting off a decision in this proceeding for 90 days, because the 90-day period is a statutory maximum, not a statutory minimum.